

AN

ADDRESS

BY

THE SOCIETY OF APOTHECARIES,

TO THE

GENERAL PRACTITIONERS

OF ENGLAND AND WALES,

ON THE PROVISIONS OF

THE BILL

“FOR REGULATING THE PROFESSION OF PHYSIC
AND SURGERY,”

AS CONTRASTED WITH THOSE OF

THE MEDICAL BILL INTRODUCED IN THE LAST
SESSION OF PARLIAMENT.

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AN ADDRESS
TO THE
GENERAL PRACTITIONERS
OF
ENGLAND AND WALES.

ON the 25th of February, 1845, "a Bill for regulating the Profession of Physic and Surgery" was introduced into the House of Commons by Her Majesty's Secretary of State for the Home Department.

A Bill having a similar object had been introduced by the Right Honorable Baronet at the close of the last Session, with the express intention that the measure might be fully canvassed, previously to the next meeting of Parliament, and that he might avail himself of any improvements which might be suggested by the scrutiny to which its provisions would be subjected.

The Bill accordingly underwent much discussion

during the recess, and Sir James Graham has had the opportunity of becoming acquainted with the feelings of the profession with respect to his measure. It may be assumed, therefore, that the present Bill has been prepared after full consideration of the objections which were urged to the Bill of last Session, and that the alterations which appear in the present Bill have been the result of that consideration.

Upon the introduction of the former Bill, the Society of Apothecaries felt it to be a duty which they owed to the General Practitioners of this country to address them on the provisions of the Bill, and to point out their probable influence on the position and prospects of that branch of the profession. A similar sense of duty induces them to offer to their Medical Brethren an explanation of the alterations which it is now proposed to make in that measure.

In their comments on the former Bill, the Society expressed their opinion so fully on the scope and tendency of the measure in its then form, that they feel it unnecessary, in the present instance, to do more than simply state the points in which the present Bill appears to differ from its predecessor, without further comment or observation of their own, than may be required to render their views of the points of difference intelligible; and, following the course which they adopted on the former occasion, the Society propose to confine their attention to those

parts of the Bill which bear upon the interests of the General Practitioner.

But before entering on this task, the Society of Apothecaries desire to avail themselves of the first opportunity afforded them of drawing especial attention to the willing testimony borne by the Secretary of State, on introducing his Bill, to the value of the services of the body of General Practitioners. The Right Honorable Baronet, after referring to the extensive field of labour in which the General Practitioners are engaged, and expressing the utmost anxiety, on his own part, to sustain the position of that class of Practitioners, is reported to have added that he believed them to be one of the most useful bodies of men in the country, and that he entertained a strong opinion, that it was desirable for the interests of the community at large, that the Legislature should use all its power to uphold the character, the station, and the attainments of the members of that branch of the profession. The Society congratulate their Medical Brethren on this acknowledgment by a Minister of the Crown, in the face of the country, of the merits of the body of General Practitioners; and the Society cheerfully accept it as a pledge, that in the legislation which may follow on medical affairs, no measure will receive the support of the Secretary of State which can be proved to have a tendency to lower the status, or impair the usefulness of that class of Practitioners. While on this point, the Society

cannot avoid saying that they attribute, in a very great degree, the better understanding which now prevails on the part, not only of Sir James Graham and Her Majesty's Government, but of the Legislature and the country at large, as to the real position of the General Practitioners, and their claims on the confidence of the public, to the discussions to which Sir James Graham's Bill has given rise, and to the share of public attention which those discussions have succeeded in attracting.

We now proceed to the consideration of the present Bill.

The constitution and powers of the Council of Health remain unaltered.

No provision is made for *ensuring* a representation of the general Practitioner in the Council, but with reference to the power reserved to the Crown of nominating six members of the Council, Sir James Graham is reported to have said, "I do not introduce that provision without stating, that any advice I may give to the Crown will be with a knowledge that a portion, at least, must be General Practitioners, and that a portion must be Country Practitioners; upon that point I am clear that *the General Practitioners and the Country Practitioners have a right to be represented in the Council*¹."

¹ See the Society's Observations on this subject in their former Address, p. 17—20.

If this opinion is correctly attributed to Sir James Graham, the General Practitioners may reasonably anticipate that no objection will exist to giving effect to that opinion, at least to the extent of *providing by the Bill* that the nomination of a portion of the six members should be made from General Practitioners.

The provisions in reference to the education, examination, and registration of the Licentiate in Medicine and Surgery (the General Practitioner), are the same as those in the former Bill. He is to be examined by the College of Physicians, assisted by the Court of Examiners of the Society of Apothecaries; and he is also to be examined by the College of Surgeons. The scheme of the course of study which he is to pursue, and the particulars of the examination which he is to pass through, are to be determined by the Colleges as before, subject to the power vested in the Council of Health, of making such changes in the scheme as the Council may think expedient. Upon this point, as upon others, the Bill fails to communicate such definite information with respect to the intentions of its framers, as to enable the reader to form an accurate judgment of its proposed operation. In this particular instance, the Bill states that the scheme of the Licentiate's education is to be prepared by *the Colleges*: and on the assumption that it was intended that the Colleges of Physicians and Surgeons should

prepare the Licentiate's scheme of education, without the concurrence of a Court of Examiners composed of Members of his own branch of the profession, the Society have expressed the strongest disapprobation of this feature of the Bill². But if it is intended that the Court of Examiners of the Society of Apothecaries are to have an equal voice with the College of Physicians in determining the curriculum of study, and "the particulars" (by which we understand not only the subjects, but the character and tone) of the examination, the provision is, to this extent, obviously less objectionable as regards the interests of the General Practitioner. So with respect to the *examination* of the Licentiate, if the Examiners appointed by the College of Physicians, and the Court of Examiners of the Society of Apothecaries, are to form a joint Board *with equal powers as respects all its Members*, whatever objection may be entertained to such a Board as compared with a Board composed of General Practitioners exclusively, the objection is of a totally different kind to that which exists to a Board of Examiners appointed by the College of Physicians *assisted* only (and that in some comparatively unimportant subject of examination, perhaps) by a Court of Examiners of General Practitioners.

The Society have no reason to doubt that Sir

² Former Address, p. 23—33.

James Graham will consent to state more distinctly his intention in these respects, as, without further information on the subject, the real scope and object of the measure must be left very much to conjecture, and apprehensions will be excited, for which, perhaps, no sufficient ground exists.

The 18th clause of the present Bill is new. Under the Apothecaries' Act, the Court of Examiners must consist of *Members* of the Society of Apothecaries. The effect of this clause has been, that the Society have been under the necessity of electing the Court of Examiners from among the Members of their corporate body, instead of having the power of choosing them from the general body of their Licentiates. This restriction is most wisely removed by the present Bill; and the Court of Examiners will be eligible from Apothecaries of ten years' standing, (whether Members of the Society of Apothecaries or not,) until there are Licentiates in Medicine and Surgery of ten years' standing on the Register, after which the Examiners must be chosen from such Licentiates. It is only justice to the Society to state, that the removal of this restriction, which they have always felt to be a very invidious one, has formed a feature in every proposal which has emanated from the Society for amending the act of 1815.

An entirely new feature of the present Bill is this. Under the Bill of last session, the Physicians

and Surgeons examined under the provisions of that Bill were to be entitled, on registration, to be admitted into the College from which they received their letters testimonial; but in the case of the Licentiate in Medicine and Surgery, no such provision was made³. In the present Bill it is provided, that every person registered after examination as a Licentiate in Medicine and Surgery shall be admitted *as a Member or Licentiate of the College of Surgeons*.

The intended operation of this clause is not apparent. If the Bill had simply provided that the Licentiate in Medicine and Surgery should be admitted as a *Member* of the College of Surgeons, the provision would have been intelligible; but what is the nature of the proposed alternative—a *Member or Licentiate* of the College of Surgeons? The fact of the Licentiate in Medicine and Surgery receiving from the College of Surgeons “letters testimonial of his being duly qualified to practise as such Licentiate,” would, in some sense, constitute him a “Licentiate of the College of Surgeons.” But it is not in this sense that the term is used; because it is not until after he has been registered as a Licentiate in Medicine and Surgery, and after his title, therefore, to that character is *complete*, that he is to be admitted as a Licentiate of the College. The addi-

³ Former Address, p. 33—35.

tional privileges *or liabilities* which will result from his admission as “a Licentiate of the College of Surgeons” are not stated. Whether the College of Surgeons is henceforth to consist of *three* classes, viz. Fellows, Members, and Licentiates, or whether the Licentiates are to be a class having some connexion with the College at present undefined, but *falling short of actual Membership*, is left unexplained. This also, we need hardly observe, is a point upon which the General Practitioner will naturally seek for further information.

Another new feature of the Bill is, that provision has been made for examining in Midwifery such persons as may offer themselves for the purpose; and for distinguishing on the register those who have passed that examination. The practice of Midwifery has not hitherto been the subject of legislative regulation in this country; and having regard to that fact, as well as to the peculiar character of the services rendered by the accoucheur, the profession will consider whether the institution of an authorized, although a voluntary, examination in Midwifery, is not as much as it would be expedient to seek for at the present time.

The clause providing for the registration of Medical Students is altered, and, in the opinion of the Society, improved ⁴.

⁴ Former Address, p. 36, 37.

The Society deeply regret to find that the power vested in the Council of Health of determining *which form of testimonial* (namely, that of Physician, Surgeon, or Licentiate) shall qualify for situations in public institutions, is retained in the present Bill. The Society continue to entertain the strongest objections to the exercise of this power by the Council of Health, and they earnestly invite attention to the grounds on which those objections rest, and which will be found fully stated in the Society's former address ⁵.

We have now come to the point which constituted the distinguishing feature between the Bill of last Session and all preceding legislation on the subject of Medical Practice; we mean the absence of any provision by which the practice of medicine by unqualified persons was declared to be an offence, and the repeal of all previous penal restrictions on such practice.

The present Bill, without enacting any new penal clause by which the act of practice is made the subject of punishment, (except, indeed, in the case of public appointments,) professes to *retain* such penal restrictions as at present exist by law. As the absence of a penal clause in the former Bill has met with the almost unanimous disapproval of the profession, we shall endeavour to state as clearly as

⁵ Former Address, p. 39—42.

possible, what we conceive to be the difference between the former Bill and the present in this respect, in order that the profession may judge what amount of benefit is likely to result from the retention of the existing penal provisions against unqualified practitioners.

It may be stated that, practically, the only penalties which exist against unqualified practice in this country, are the penalties imposed by the Apothecaries' Act: and by the former Bill the clauses imposing these penalties were to be repealed. In the present Bill the clauses in question are only *directly* affected to this extent, that persons who are registered under the Bill will be exempted from their operation. The effect of this alteration is, that whereas under the former Bill any person who thought proper to enter upon the practice of medicine, would have been at perfect liberty to do so, without reference to his competency for the task; under the present Bill, every unregistered person, other than an Apothecary, who presumes to administer medicine of his own authority in medical cases will remain subject to a penalty of 20*l.* for every act of practice.

To the extent, therefore, of *not repealing* the only penal check upon unqualified practice, which is practically available, the present Bill is free from the objection which existed to its predecessor. Nor is this all. The present Bill, like the former, contains

a clause subjecting to punishment all persons who pretend to be registered Practitioners, or assume any title implying that they are so ; but the clause, as at present framed, is more stringent than the corresponding clause in the former Bill. The offence which it was proposed to guard against by the former Bill, was pretending *to be registered*, or assuming a title implying *such registration*—an offence which there would have been little temptation to commit, when the party was left at liberty to assume almost any title, implying that he was *a Medical or Surgical Practitioner* : but the present Bill apparently contemplates making it an offence to pretend to be a Physician, Doctor, Surgeon, Licentiate in Medicine and Surgery, or Apothecary, or to assume falsely either of those titles, or any name, title, or addition, implying that he is registered or *recognised by law* as a Medical or Surgical Practitioner. Still, notwithstanding this clause, it would, in the absence of a clause imposing a penalty on *the act of practice itself*, be competent for unqualified persons to practise with impunity, provided they took care not to hold themselves out as *legally qualified* Practitioners.

The Society have, on former occasions, explained the difficulties which exist in enforcing the penalties imposed by the Apothecaries' Act⁶. They regret to say, that no attempt has been made in the present

⁶ The Society's Statement on the subject of their administration of the Act, p. 30, 31. Former Address, p. 49, 50.

Bill to diminish those difficulties in any respect, and they fear it will be found that the provisions of the Bill will materially impair even the *present* efficiency of the prosecution as a check upon illegal practice.

The proceeding for the recovery of the penalty imposed by the Apothecaries' Act, is in substance a complaint that a party has practised as an Apothecary, without having obtained the certificate of qualification required by that Act. Now, as the law stands, there appears nothing unreasonable in this complaint. If the law requires, on the one hand, that before a person is permitted to practise as an Apothecary, he shall go through a certain course of study, and submit his qualifications to the test of an examination, it secures to him, on the other, *the privileges* of a Medical Practitioner, when he has established his competency to act in that capacity. But in what position will an individual find himself who may acquire a certificate of qualification to practise as an Apothecary after the present Bill has become law? It is true, he will be entitled to practise as an Apothecary, and, perhaps, to recover compensation for services rendered in that capacity⁷, but he will not be entitled to be registered. And being *unregistered*, he will be ineligible to public appointments, his certificate will be inadmissible as the

⁷ The language of the 34th clause appears to the Society to leave the latter point in some doubt.

certificate of a Medical Practitioner, and he will be deprived of all the privileges and immunities to which the present Apothecary is entitled, because the provisions, by which those privileges and immunities are secured, are expressly repealed by the present Bill, and are re-enacted in favour of *registered* Practitioners only.

For these reasons, the certificate of qualification to practise as an Apothecary will be found to be comparatively valueless as a Medical qualification. The examination for the certificate will consequently fall into disuse: and yet the only mode of reaching an unlicensed Practitioner will be by charging him with practising without having possessed himself of that certificate. The proceedings will inevitably wear the aspect of an attempt to punish a man for an act which the law has not constituted an offence, by charging him with another act for which a punishment can be awarded. The real offence will be *practising as a Licentiate in Medicine and Surgery without being registered*; and the offence for which alone he can be punished, and with which, therefore, he must be charged (if at all), will be *practising as an Apothecary without a certificate of qualification for such practice*. Our Professional Brethren will form their own opinion how far such a state of things is calculated to give a character of unfairness to the proceedings, and, as a necessary consequence, to create a feeling of sympathy for the offender.

The Society draw attention to this view of the subject, not in a spirit of cavil or complaint, but with the sincere hope that, as Sir James Graham has conceded *the principle* of a penal clause, (in deference, as the Society fully believe, to the earnest remonstrances of the Profession on the subject,) he will be of opinion that the nature of the punishment and the character of the proceeding for enforcing it, should be such as to encourage an observance rather than tempt to a breach of the law, and to enlist public sympathy on the side of the law, and not on the side of those who offend against it.

A new clause has been introduced into the present Bill, empowering the Council of Health to erase from the register the name of any person who shall be convicted of felony, or who shall be found to have procured his registry by fraud, or to have wilfully given a false certificate in any case in which the certificate of a Physician or Surgeon is required by law; and this punishment is to be followed by the total loss of all the privileges of a Medical Practitioner. The Society would suggest, that this clause would be more likely to effect its own object if a power were given to the Council of Health, to restore a person to the Register whose name had been erased, if a fitting case for the exercise of such a power should present itself. The inability of the Council, *under any circumstances*, to restore a name which has once been erased from the Register, would probably be

found to render the Council unwilling to exercise its power in cases which, under other circumstances, would justly merit such a punishment.

Having thus briefly drawn attention to the provisions of the present Bill as contrasted with those of the Bill of the last session, it remains only for the Society to invite the General Practitioners of this country to a calm and temperate examination of the measure in its present shape, with especial reference, of course, to its influence on their own branch of the profession.

It may be expected, however, that the Society should state the course which they propose to pursue in reference to this Bill.

On the introduction of the Bill of last session, the Society, after explaining their own views of that measure, invited an expression of the feelings and wishes of their Medical brethren on the subject, with the avowed intention of furthering the object of those wishes to the utmost of the Society's power. The Society's published correspondence with the Secretaries of the Committee of General Practitioners of Manchester explain the steps which the Society have taken in promoting what they believed to be the wish of a great majority of the General Practitioners.

The Society see no reason to adopt a different course now to that which they adopted on the introduction of the former measure. They will await

an expression of the sentiments of the General Practitioners with respect to the present Bill; and when they are in possession of the feelings of their medical brethren on the subject, and are apprised of the object which they wish to accomplish, the Society's desire will be, as it has hitherto been, to render such assistance as they are able, in furthering the attainment of that object. The Society, however, as a public body, responsible, not only to the General Practitioners but to the country at large, for the course they may pursue in reference to the great question of Medical Reform, reserve to themselves, as they are bound to do, the full right of deciding upon the particular mode in which the Society may render assistance, in furthering the wishes and objects of their professional brethren.

THE END.

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